STATE OF MICHIGAN

COURT OF APPEALS

In re E. P. LEVERETTE, Minor.

UNPUBLISHED
January 26, 2017

No. 332963
Wayne Circuit Court
Family Division
LC No. 14-517192-NA

Before: BECKERING, P.J., and SAWYER and SAAD, JJ.

PER CURIAM.

Respondent appeals the order of the trial court that terminated his parental rights to the minor child EL under MCL 712A.19b(3)(a)(*ii*) (parent has deserted the child for 91 days or more and has not sought custody of the child), (c)(*i*) (conditions that led to adjudication continue to exist), (c)(*ii*) (other conditions continue to exist and parent has not rectified those conditions after given a reasonable opportunity to do so), (g) (failure to provide proper care or custody), (i) (parental rights to one or more siblings of the child terminated due to serious and chronic neglect, physical abuse, and prior unsuccessful attempts to rehabilitate), and (j) (reasonable likelihood that child will be harmed if returned to parent).[1] We affirm.

I. STATUTORY GROUNDS

Respondent contends that the trial court erred when it found that termination of his parental rights was proper under MCL 712A.19b(3). We disagree.

We review a trial court's factual findings for clear error "as well as its ultimate determination that a statutory ground for termination of parental rights has been proved by clear and convincing evidence." *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010). "A finding of fact is clearly erroneous if the reviewing court has a definite and firm conviction that a mistake has been committed, giving due regard to the trial court's special opportunity to observe the witnesses." *In re Moss*, 301 Mich App 76, 80; 836 NW2d 182 (2013). Additionally, we review a trial court's interpretation and application of a statute de novo. *In re Gonzales/Martinez*, 310 Mich App 426, 431; 871 NW2d 868 (2015).

[1] Respondent mother's rights were also terminated in the same order, but she is not a party to this appeal.

The trial court found by clear and convincing evidence under MCL 712A.19b(3)(a)(*ii*), (c)(*i*), (c)(*ii*), (g), (i), and (j) that respondent's parental rights should be terminated. Although the trial court found that these numerous grounds were proven by clear and convincing evidence, only one statutory ground need to be proven to terminate a respondent's parental rights. *In re Ellis*, 294 Mich App 30, 32; 817 NW2d 111 (2011). Thus, we need not address each and every ground the trial court relied upon, as long as we find that at least one was proven by clear and convincing evidence. See *In re Powers*, 244 Mich App 111, 119; 624 NW2d 472 (2000). Accordingly, we will primarily address two of those grounds.

A. MCL 712A.19b(3)(c)(*i*)

MCL 712A.19b(3)(c)(*i*) provides that termination is proper if

> The parent was a respondent in a proceeding brought under this chapter, 182 or more days have elapsed since the issuance of an initial dispositional order, and the court, by clear and convincing evidence, finds . . .
>
> > (*i*) The conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.

With respect to this subsection, the trial court did not clearly err when it found that 182 days had elapsed between the trial court's initial dispositional order and the close of the termination hearing and that the conditions that led to the adjudication continued to exist and would likely continue to exist. Proceedings against respondent began in July 2014. The trial court entered the initial disposition order against him on October 14, 2014, and the close of the termination hearing was held April 22, 2016. Thus, approximately 18 months (or over 500 days) had elapsed during this time period.

The conditions that led to the adjudication included the removal of another child from respondent's care as well as respondent's alcoholism, substance abuse, and domestic violence issues with EL's mother. Respondent was offered services to address these issues in both Monroe County and Wayne County. Despite petitioner's efforts, respondent failed to engage and benefit from these services. Respondent tested positive for alcohol and buprenorphine several times and was arrested for domestic violence in June 2015. Respondent refused a number of drug screens and sporadically participated in therapy sessions. In fact, one group therapy session at respondent's home was terminated early because respondent was belligerent and possessed alcohol. In light of this evidence, the trial court did not clearly err when it found that the conditions that led to adjudication continued to exist and would not be rectified within a reasonable time considering the child's age.

B. MCL 712A.19b(3)(g)

MCL 712A.19b(3)(g) allows a court to terminate a respondent's parental rights if "[t]he parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age."

Here, the trial court did not clearly err when it concluded that respondent was unable to provide proper care and custody for EL and that there was no reasonable expectation that he would be able to do so within a reasonable time. In determining whether a parent is not likely to provide proper care and custody for the child within a reasonable time, a court may look to "a parent's failure to comply with the parent-agency agreement" because it "is evidence of a parent's failure to provide proper care and custody for the child." *In re JK*, 468 Mich 202, 214; 661 NW2d 216 (2003).

Although EL was taken from respondent's care and custody shortly after his birth, respondent failed to demonstrate in a two-year period that he could provide proper care and custody for EL due to respondent's ongoing substance abuse problem, involvement in domestic violence, and perpetual inability to comply with the parent-agency service plan. In between January 2015 and December 2015, respondent missed approximately 34 drug screens, which he was aware are considered positive results under petitioner's policy.

In addition to the missed drug screens, respondent missed several parenting-time visits. In fact, respondent missed 18 visits with EL between November 2014 and December 2015, despite his close proximity to the location of the visits, access to bus tickets, and rides offered by the agency. Respondent's last visit with EL was on November 15, 2015. Petitioner also presented evidence that supported respondent's inability to obtain safe, suitable, and stable housing for EL. During the duration of the case, respondent's housing changed five different times. Of these housing changes, respondent was living in a motel for a month in 2014 and in jail for a month in 2015.

To comply with his service plan, respondent was required to "attend parenting classes; have substance abuse services and weekly random drug screens; individual and family counseling; maintain safe and suitable housing and a legal source of income; visit regularly with the child; and maintain regular contact with the worker." Based on this evidence, respondent consistently failed to comply with the terms and conditions of the parent-agency plan by failing to regularly attend visits with the child and other scheduled services, failing to submit to drug screens, maintain regular contact with the worker, and maintain safe and suitable housing. Respondent's failure to comply with the parent-agency agreement is evidence of his failure to provide proper care and custody for EL. See *id.* Thus, the trial court did not clearly err when it made its finding under this subsection.

C. LACK OF SPECIALIZED SERVICES

To the extent that respondent argues that he should have been afforded more time to comply with his service plan and offered specialized services because of his diagnosed mental health issues, respondent fails to establish that he was deprived of individualized services or how additional services would have helped him comply with the service plan. Respondent relies on *In re Hicks/Brown*, ___ Mich App ___; ___ NW2d ___ (Docket No. 328870, issued April 26, 2016), slip op, p 16, for the proposition that neither the court nor petitioner "may sit back and wait for the parent to assert his or her right to reasonable accommodations" when the parent has "a known or suspected intellectual, cognitive, or developmental impairment." (Emphasis omitted.)

In *In re Hicks/Brown*, a psychological test revealed that the respondent had a low IQ score of 70 and "[c]aseworkers commented on the overt appearance of [the] respondent's impairment upon meeting her, as well as noting her difficulty in communicating on the telephone, her shyness and hesitancy, and her flat affect." *Id*. at ___ (slip op at 1). Further, the parenting class coordinator testified that the respondent "appear[ed] to have some cognitive delays and [did] not understand some things presented to her, and things need[ed] to be explained to her in simple terms." *Id*. at ____ (slip op at 3). The *In re Hicks/Brown* Court held that the petitioner's reunification efforts were inadequate rendering the trial court's termination premature because the "respondent's compromised intellectual abilities were readily apparent" when the petitioner began working with the respondent; yet, the petitioner waited 13 months to secure psychiatric evaluations. *Id*. at ___ (slip op at 16-17).

Unlike the respondent in *In re Hicks/Brown*, respondent showed no overt appearances of cognitive impairment and no evidence was presented to show respondent's difficulty in understanding the court-ordered service plan. Further, unlike the petitioner in *In re Hicks/Brown*, petitioner was aware of respondent's diagnosis of schizophrenia and depression at the early stages of the case because respondent had already been evaluated by a psychologist in the Monroe Circuit Court case and was undergoing treatment in Monroe County. Moreover, the delay in providing services to respondent was three months in this case versus the two-year delay in *In re Hicks/Brown*. *Id*. at ___ (slip op at 2). This delay did not render petitioner's reunification efforts inadequate as respondent had a year and a half to comply with his service plan or to request additional services. There is no record evidence that respondent's cognitive impairments prevented him from participating in or benefiting from services within this time period. Therefore, we are unpersuaded by respondent's contention that he should have been afforded more time.

Additionally, to the extent respondent argues that the trial court erred when it did not determine respondent suffered from a "disability" under the Americans with Disabilities Act (ADA), his claim is without merit. The protection that the ADA provides in a child termination proceeding is to ensure that no disabled parent is excluded from participation or denied benefits from "'services, programs, or activities of a public entity.'" *Id*. at ___ (slip op at 7), quoting 42 USC 12132. Based on the evidence, respondent was granted multiple opportunities to participate in and benefit from services. If anyone denied respondent an opportunity to participate in or benefit from such services, it was respondent himself.

II. BEST-INTERESTS DETERMINATION

Respondent also contends that the trial court erred when it found that termination was in EL's best interests. We disagree.

After the establishment of statutory grounds, a trial court must order the termination of parental rights if it finds by a preponderance of the evidence that the termination is in the child's best interests. MCL 712A.19b(5); *In re Moss*, 301 Mich App at 83. We review a trial court's decision that termination is in the child's best interests for clear error. *In re White*, 303 Mich App 701, 713; 846 NW2d 61 (2014). A finding is clearly erroneous, if after reviewing the record, we are left with a definite and firm conviction that a mistake has been made. *In re Mason*, 486 Mich at 152.

In making a best-interests determination, the trial court should weigh all available evidence, *In re White*, 303 Mich App at 713, and the trial court's focus should be on the child rather than the parent, *In re Moss*, 301 Mich App at 87-88. This determination may include the consideration of a wide variety of factors such as

> the child's bond to the parent, the parent's parenting ability, the child's need for permanency, stability, and finality, and the advantages of a foster home over the parent's home. The trial court may also consider a parent's history of domestic violence, the parent's compliance with his or her case service plan, the parent's visitation history with the child, the children's well-being while in care, and the possibility of adoption. [*In re White*, 303 Mich App at 713-714 (quotation marks and citations omitted).]

After a review of the evidence presented, we are unmoved by respondent's contention that the trial court erred when it found that termination of his parental rights was in the best interests of EL. As discussed above, ample evidence was established that respondent battled an ongoing addiction with alcoholism and substance abuse. Additionally, evidence was presented of respondent's domestic violence history with the most recent incident occurring in June 2015, which was during the pendency of petitioner's reunification efforts.

Contrary to respondent's assertion, the trial court did consider EL's placement with the child's maternal aunt on the record. Additionally, evidence showed that EL was bonded with the aunt and doing well under her care. The aunt testified that respondent never provided her with any type of clothing, food, or diapers for EL. Moreover, the aunt expressed an interest in adopting EL. Based on respondent's failure to comply with the case service plan, alcohol and substance abuse history, domestic violence history, and advantages of the aunt's home over respondent's home, the trial court did not clearly err when it found that termination of respondent's parental rights was the best interests of EL.

Affirmed.

/s/ Jane M. Beckering
/s/ David H. Sawyer
/s/ Henry William Saad